


EX PARTE OR LATE FILED

 **Lampert & O'Connor, P.C.**

1750 K Street NW
Suite 600
Washington, DC 20006

ORIGINAL

RECEIVED

OCT 10 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Tel 202/887-6230
Fax 202/887-6231

Kenneth R. Boley
holey@l-o-law.com

VIA HAND DELIVERY

October 10, 2003

EX PARTE

Marlene Dortch
Secretary
Federal Communications Commission
The Portals, TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

Re *Ex Parte* Presentations – *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities* --CC Docket Nos 02-33, 98-10, 95-20; *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*--CC Docket No 01-337

Dear Ms. Dortch,

On October 9, 2003, Mark O'Connor of this firm and the undersigned, on behalf of EarthLink, met with Christopher Libertelli, Senior Legal Advisor to Chairman Powell, to discuss the above-referenced proceedings.

During these meetings, EarthLink discussed its position described in documents previously filed in the above-referenced dockets, with emphasis on Bell Company pricing of wholesale ADSL service. EarthLink explained its view that Bell Companies price such service unreasonably above cost, estimating that the Bells incur only approximately \$14.00 in costs (including normal profit and joint and common costs) per month to provide a single ADSL arrangement. EarthLink also discussed a minimum cost of providing retail ISP service of approximately \$8 per month in addition to the wholesale ADSL price, and its position that the Bell Companies price their retail broadband Internet access service below cost, resulting in an illegal cross-subsidy and illegal price squeeze. During the meeting, EarthLink referred to and displayed the attached document, which is a page from Verizon's Infospeed cost justification materials filed on April 14, 2003 as part of Verizon Transmittal No. 311.

 **Lampert & O'Connor, P.C.**

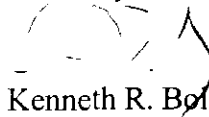
October 10, 2003

Page 2

EarthLink emphasized that the FCC would enhance broadband adoption under Title II of the Act by requiring carriers to offer wholesale ADSL at cost-based rates, which would result in lower retail prices and greater consumer demand for broadband.

Pursuant to the Commission's Rules, eight copies of this letter/memorandum are being provided to you for inclusion in the public record in each of the above-captioned proceedings. Should you have any questions, please contact me.

Sincerely,



Kenneth R. Boley
Counsel for EarthLink, Inc.

CC Christopher Libertelli, Esq.
Qualex

VERIZON
INFOSPEED - DSL

<u>ITEM</u>	<u>SOURCE</u>	<u>Weighted VERIZON</u>
1 Unit Investment - Note 1	Company Study	\$668 57
2 Depreciation	Company Study	\$80 48
3 Cost of Money - Note 2	Company Study	\$20 78
4 Income Taxes	Company Study	\$13.65
5 Maintenance	Company Study	\$20 18
6 Administration	Company Study	\$7 88
7 Other Taxes	Company Study	\$3 72
8 Total Direct Cost	Ln 2 Ln 7	\$146 70
9 Annualized portion of nonrecurring cost adjusted for the cost of money(11 25%)		\$8 76
10 Other Expenses - Note 3	Company Study	\$95 04
11 Total Annual Cost	Ln 8 Ln10	\$250 50
12 Monthly Cost	Ln 11/12	\$20 88
13 Monthly Rate		\$26 95
<u>Ratios</u>		
13 Annual Cost/Investment	Ln 8/Ln 1	0.22
14 Cost/Monthly Rate	Ln 12/Ln 13	0 77

Note 1 - Unit Investment include capitol required to purchase circuit equipment, central office equipment and interoffice facilities.

Note 2 - This reflects the Cost of Money component for VZ East (fBA) only The Cost of Money component for VZ West (fGTE) is included in the Depreciation cost on Line 2

Note 3 - Other Expenses relates to the support functions performed by Network and Marketing, Research and Development, Procurement, and Information Systems